

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

EDWARD NELSON,)
)
 Claimant,)
)
 v.)
)
CITY OF BONNERS FERRY,)
)
 Employer,)
)
 and)
)
IDAHO STATE INSURANCE FUND,)
)
 Surety,)
 Defendants.)
_____)

IC 2000-039843

**ORDER DENYING
RECONSIDERATION**

October 21, 2008

On August 26, 2008, Claimant filed a Motion to Reconsider Commission's Order and Memorandum in Support thereof; Request for Hearing and Request for Oral Argument. The motion requested reconsideration of the Commission's August 12, 2008, decision in the above-referenced case. Defendants filed a reply brief on September 9, 2008.

Claimant argues that his complaint, which was filed on September 16, 2006, was well within one year of the last payment of income benefits because Defendants discontinued income benefits on June 5, 2006. Claimant avers that applying the plain meaning of Idaho Code § 72-706(3) to the stipulated facts would mean Claimant's complaint was timely filed.

Defendants argue that the case of Salas v. J.R. Simplot Co., 138 Idaho 212, is directly on point. Defendants allege the case law clearly states that new benefits acquired after the fourth anniversary, but pursuant to the original accident, do not toll the one-year window.

The Idaho Supreme Court has held that income payments must begin before the fourth anniversary of the accident date and continue across it to invoke an extension to the five-year statute of limitations pursuant to Idaho Code 72-706(3). Salas v. J.R. Simplot Co., 138 Idaho 212, 61 P.3d 569 (2002); see also Walters v. Blincoe's Magic Valley Packing Co., 117 Idaho 239, 787 P.2d 225 (1989).

Claimant argues that because Defendants paid benefits after the fourth anniversary Claimant has one-year from the last payment within which to file his complaint. But the Idaho Supreme Court has held that even if income benefits were paid again after the fourth anniversary, if no payments for income benefits were being made at the fourth anniversary of the accident the five-year statute of limitations would bar a complaint filed later. Salas v. J.R. Simplot Co., 138 Idaho 212, 61 P.3d 569 (2002).

As stated in the Commission's decision, Claimant's accident date was October 13, 2000. Thus the fourth anniversary of Claimant's accident was October 13, 2004. The dates that Claimant received income benefits were detailed in paragraph 9 of the stipulated findings of fact. Defendants were not paying any income benefits across October 13, 2004, as required to invoke the extension. Thus, Claimant's complaint for income benefits, filed on September 16, 2006, was not timely filed.

Claimant also argues that Defendants might have manipulated the timing of income benefit payments. If Claimant had evidence of some manipulation by Defendants regarding the payment of income benefits then he should have offered such. Claimant chose to submit stipulated facts to the Commission. The Commission reviewed the record as submitted and issued its ruling.

Finally Claimant alleges that Defendants waived their right to assert the affirmative defense of Idaho Code § 72-706. The record indicates that Defendants properly paid income and medical benefits and that Surety had no communication with Claimant in regard to the statute of limitations. There is no evidence that Defendants effectively waived the statute of limitations. To the extent that Claimant makes the same argument discussed above citing Defendants payment of income benefits until June 2006 and payment of medical expenses, the Commission finds that extension allowed by Idaho Code § 72-706(3) is not invoked.

Although Claimant disagrees with the Commission's analysis and conclusion, the arguments raised by Claimant's request for reconsideration were considered and decided by the Commission in the original decision. Claimant's motion does not necessitate a hearing. The Commission's decision of August 12, 2008, in the above referenced case, is supported by substantial evidence in the record and Claimant has presented no persuasive argument to disturb the decision.

Based upon the foregoing reasons, Claimant's Motion to Reconsider Commission's Order and Memorandum in Support thereof; Request for Hearing and Request for Oral Argument is DENIED.

DATED this 21st day of October, 2008.

INDUSTRIAL COMMISSION

/s/_____
James F. Kile, Chairman

Participated but did not sign
R.D. Maynard, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _21 day of __October____, 2008, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following persons:

JOSEPH JARZABEK
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sb/cjh

_____/s/_____
